

Appl. No. 10/790,844
Amdt dated January 20, 2006
In Reply to Office Action dated September 21, 2005

Amendments to the Drawings:

The two attached sheets of drawings include changes to Figs. 1 and 2 and replace the original sheets including Figs. 1 and 2. In Figs. 1 and 2, the label "evaluation unit" has been added to box 23.

Attachment: Replacement Sheets

Annotated Sheets Showing Changes

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REMARKS

Claims 1-20 are presently in the application.

Figs. 1 and 2 of the drawings have been corrected to add the label "evaluation unit" to box 23. The claims have also been amended to change reference numeral "18" to read "6." The specification, including the claims, no longer refers to reference numeral 18. In view of the preceding, withdrawal of the objection to the drawings is requested.

Claims 1-9 have been rejected under 35 U.S.C. 112, second paragraph, as indefinite because the language "the container" lacks a proper antecedent. In the present amendment, the term "fuel tank" has been substituted for the term "container" in each of claims 1-9. A new set of claims, namely, claims 10-18, has been added generally corresponding to claims 1-9, but broader in the sense that they are directed to "a device for measuring the level of a fluid in a **container**," rather than to "a device for measuring the level of a fluid in a **fuel tank of a motor vehicle**." In view of the preceding, withdrawal of the rejection under 35 U.S.C. 112, second paragraph, is requested.

The examiner's indication of allowable subject matter in claims 3, 4 and 8 is greatly appreciated. Claims 3 and 8 have been rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 3, 4 and 8 are now in allowable condition.

Claims 1 and 2 have been rejected under 35 U.S.C. 102(b) as anticipated by Boscolo (US 4,675,660).

Reconsideration of this rejection is respectfully requested.

Boscolo teaches a method and apparatus for measuring a liquid level in a container, for example, a cardboard container for milk. Col. 1, ll. 1-41. The apparatus illustrated in Fig. 1 includes a cardboard container 11, a filler tube 12, a transmitter transducer 15 and a receiver transducer 16. Boscolo explains that the transmitter transducer 15 is positioned in contact with an upper portion of the filler tube 12. The transducer 15 thus coupled to the filler tube 12 causes an ultrasonic vibration to be transmitted through the filler tube 12 to a liquid 13 and thus to a wall of the cardboard tube 11. The receiver transducer 16 is located outside the cardboard tube 11 and can pick up an ultrasonic signal emitted by the wall of the cardboard tube 11 itself. See, col. 4, ll. 16-24.

Claims 1 and 10 are directed to a device for measuring the level of a fluid in a container/fuel tank of a motor vehicle, the container/fuel tank including both a sound guide conduit disposed in the container/fuel tank and a fluid feeding device in the container/fuel tank.

Fig. 1 shows a fluid feeding device 6, for instance a fuel pumping device, with a device according to the invention for measuring a fill level in a container 1, for instance a fuel tank of a motor vehicle. The device comprises a sound guide conduit 2 and an ultrasonic transducer 3. The sound guide conduit 2 and the ultrasonic transducer 3 are disposed on a fluid feeding device 6, which is inserted into a container such as a fuel tank 1.

The examiner seems to be reading the claimed “sound guide conduit disposed in the container” and the “fluid feeding device” on the same element, namely, the filler tube 12. It is improper to read two separately claimed elements on the same element in the prior art.

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To support a rejection of a claim under 35 U.S.C. 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Boscolo does not teach a device for measuring the level of a fluid of the type recited in claims 1 and 10 which includes both a sound guide conduit disposed in the container/fuel tank and a fluid feeding device in the container/fuel tank.

Boscolo also fails to show the fuel tank of claims 1-9 and the fuel pumping device of claims 19 and 20.

Claims 5 and 7 have been rejected under 35 U.S.C. 103(a) as unpatentable over Boscolo in view of Cummings (US 5,471,872).

Claims 6 and 9 have been rejected under 35 U.S.C. 103(a) as unpatentable over Boscolo in view of Shuler et al (US 4,090,407).

Reconsideration of these rejections is also respectfully requested.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). None of Boscolo, Cummings and Shuler teaches or suggests a device for measuring the level of a fluid of the type recited in claims 1 and 10 which includes both a sound guide conduit disposed in the container/fuel tank and a fluid feeding device in the container/fuel tank. Accordingly, claims 1 and 10 are not rendered obvious by the combined teachings of Boscolo and Cummings or Boscolo and Shuler.

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The Commissioner is hereby authorized to charge the fee in the amount of \$120 for a
Petition for One-Month Extension of Time to Deposit Account 07-2100.

Entry of the amendment and allowance of the claims are respectfully requested.

Respectfully submitted,



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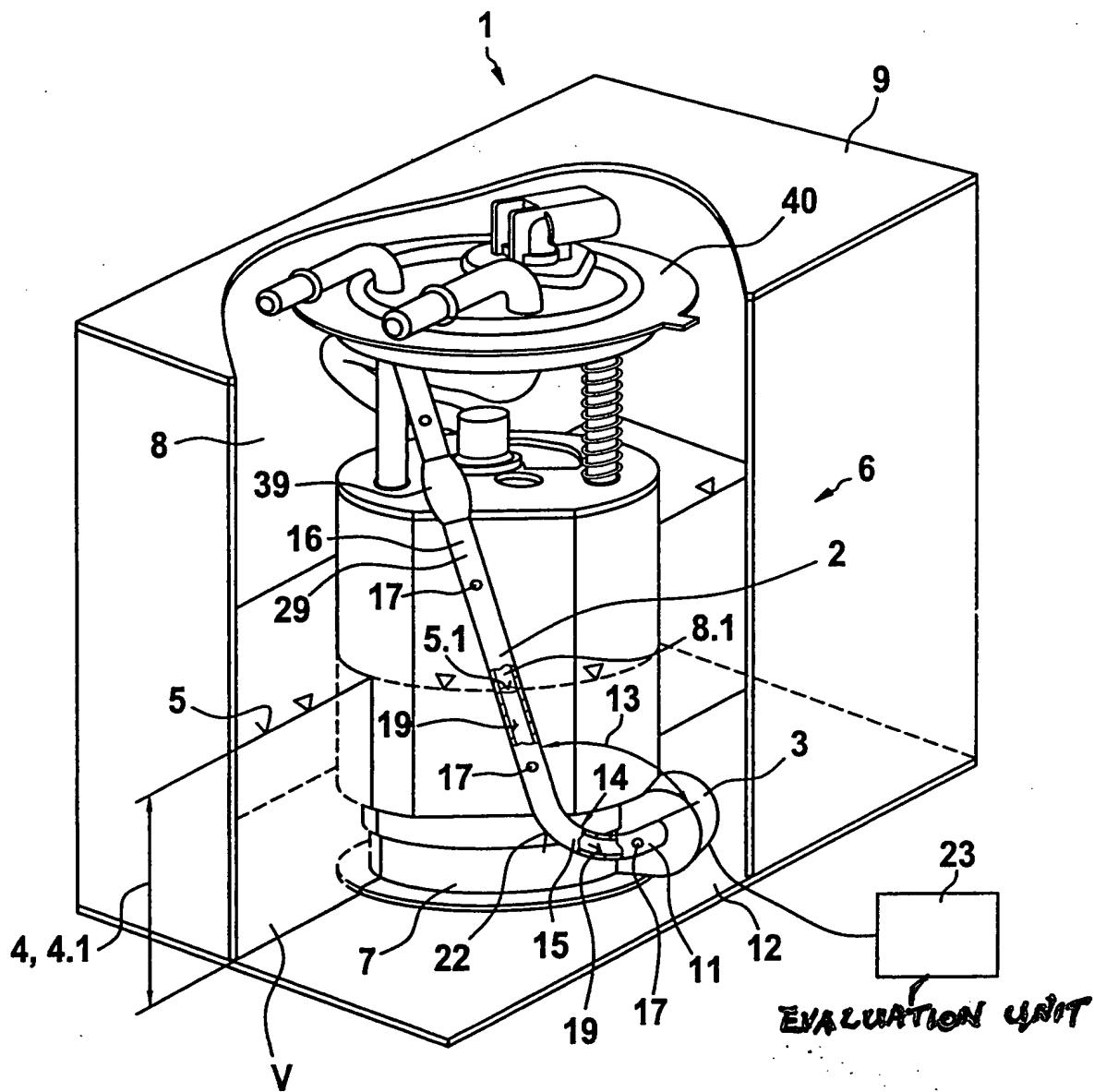
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Fig. 1



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Annotated Sheet

Fig. 2

